

wage determination, or the basic hourly rate actually paid by the contractor, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contributions, costs, or payment of cash equivalents for fringe benefits. Overtime shall not be computed on a rate lower than the basic hourly rate in the wage determination.

**22.406-3 Additional classifications.**

(a) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the contracting officer, pursuant to the clause at 52.222-6, Davis-Bacon Act, shall require that the contractor submit to the contracting officer, Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, which, along with other pertinent data, contains the proposed additional classification and minimum wage rate including any fringe benefits payments.

(b) Upon receipt of SF 1444 from the contractor, the contracting officer shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(c)(1) If the criteria in paragraph (b) of this section are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the contracting officer approves, the contracting officer shall submit a report (including a copy of SF 1444) of that action to the Administrator, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

(2) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and

the contracting officer do not agree on the proposed additional classification, or if the criteria are not met, the contracting officer shall submit a report (including a copy of SF 1444) giving the views of all interested parties and the contracting officer's recommendation to the Administrator, Wage and Hour Division, for determination of appropriate classification and wage rate.

(d)(1) Within 30 days of receipt of the report, the Administrator, Wage and Hour Division, will complete action and so advise the contracting officer, or will notify the contracting officer that additional time is necessary.

(2) Upon receipt of the Department of Labor's action, the contracting officer shall forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause at 52.222-6 and that workers in the affected classification receive no less than the minimum rate indicated from the first day on which work under the contract was performed in the classification.

(e) In each option to extend the term of the contract, if any laborer or mechanic is to be employed during the option in a classification that is not listed (or no longer listed) on the wage determination incorporated in that option, the contracting officer must require that the contractor submit a request for conformance using the procedures noted in paragraphs (a) through (d) of this section.

[53 FR 4935, Feb. 18, 1988, as amended at 57 FR 44263, Sept. 24, 1992; 59 FR 67038, Dec. 28, 1994; 66 FR 53481, Oct. 22, 2001]

**22.406-4 Apprentices and trainees.**

(a) The contracting officer shall review the contractor's employment and payment records of apprentices and trainees made available pursuant to the clause at 52.222-8, Payrolls and Basic Records, to ensure that the contractor has complied with the clause at 52.222-9, Apprentices and Trainees.

(b) If a contractor has classified employees as apprentices or trainees without complying with the requirements of the clause at 52.222-9, the contracting officer shall reject the classification and require the contractor to pay the affected employees at the rates